

§ 137.1

33 CFR Ch. I (7–1–10 Edition)

- 137.55 Searches for recorded environmental cleanup liens.
- 137.60 Reviews of Federal, State, tribal, and local government records.
- 137.65 Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.
- 137.70 Specialized knowledge or experience on the part of persons specified in §137.1(a).
- 137.75 The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.
- 137.80 Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.
- 137.85 The degree of obviousness of the presence or likely presence of oil at the facility and the real property on which the facility is located and the ability to detect the oil by appropriate investigation.

AUTHORITY: 33 U.S.C. 2703(d)(4); Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107–296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); Department of Homeland Security Delegation No. 14000.

SOURCE: USCG–2006–25708, 73 FR 2150, Jan. 14, 2008, unless otherwise noted.

Subpart A—Introduction

§ 137.1 Purpose and applicability.

(a) In general under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*), an owner or operator of a facility (as defined in §137.10) that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. However, if that person can demonstrate, among other criteria not addressed in this part, that they did not know and had no reason to know at the time of their acquisition of the real property on which the facility is located that oil was located on, in, or at the facility, the person may be eligible for the innocent landowner defense to liability under 33 U.S.C. 2703(d)(4). One element of the defense is that the person made all appropriate inquiries into the nature of the real property on which the facility is located before acquiring it. The purpose of this part is to prescribe standards and practices for making those inquiries.

(b) Under 33 U.S.C. 2703(d)(4)(E), this part does not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where a property inspection and a title search reveal no basis for further investigation. In those cases, the property inspection and title search satisfy the requirements of this part.

(c) This part does not affect the existing OPA 90 liability protections for State and local governments that acquire a property involuntarily in their functions as sovereigns under 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of properties by State and local governments fall under the provisions of 33 U.S.C. 2703(d)(2)(B), not under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4) and this part.

§ 137.5 Disclosure obligations.

(a) Under 33 U.S.C. 2703(c)(1), persons specified in §137.1(a), including environmental professionals, must report the incident as required by law if they know or have reason to know of the incident.

(b) This part does not limit or expand disclosure obligations under any Federal, State, tribal, or local law. It is the obligation of each person, including environmental professionals, conducting inquiries to determine his or her respective disclosure obligations under Federal, State, tribal, and local law and to comply with them.

§ 137.10 How are terms used in this part defined?

(a) The following terms have the same definitions as in 33 U.S.C. 2701: *damages*; *discharge*; *incident*; *liable* or *liability*; *oil*; *owner* or *operator*; and *removal costs*.

(b) As used in this part—

Abandoned property means a property that, because of its general disrepair or lack of activity, a reasonable person could believe that there is an intent on the part of the current owners to surrender their rights to the property.

Adjoining property means real property the border of which is shared in part or in whole with that of the subject property or that would be shared in part or in whole with that of the property but for a street, road, or other